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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE 27th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 February 1990, at 10 a.m.

Chairman: Mrs. QUISUMBING (Philippines)
later: Mr. DITCHEV (Bulgaria)

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The meeting was called to order at 10.25 a.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES (agenda item 10) (continued) (E/CN.4/1990/12, 13, 15, 16, 17 and Add.1, E/CN.4/Sub.2/1989/28, E/CN.4/Sub.2/1989/29/Rev.1, E/CN.4/Sub.2/1988/28; and A/44/708)

1. Mr. VALLADARES (United States of America) said that, if human rights were the embodiment of political freedom, there could be no greater assault on the dignity of man than torture. Torture was not merely the infliction of physical pain and mental anguish, it was also the annihilating terror, the anger, and the frustration of being helpless in the custody of government officials who operated without controls, who did not hesitate to violate the physical integrity or mental well-being of their victims, and who felt no obligation to comply with the universally recognized human rights and fundamental freedoms in dealing with their fellow human beings.

2. For those victims who were fortunate enough to survive such degrading treatment, there was never any escape from the emotional scars. Time might heal the physical signs, but there was something indescribable with which only those who had experienced the living death in the universe of torture were familiar.

3. Torture, particularly government-sanctioned torture, also affected those who were close to the victim. His own wife had waited 13 years for him, while suffering the loneliness and desperation of not knowing what had happened or would happen. Fortunately, his story had had a happy ending. But there were other families such as that of Enrique Camarena, the drug enforcement agent who had been kidnapped, tortured and assassinated in Mexico five years previously. According to a recent report in Le Monde, the then chief of the Federal Mexican Police and the head of the Mexican Interpol had been indicted in Mr. Camarena's torture and death.

4. As a former political prisoner, he joined in celebrating the long-awaited release of Mr. Nelson Mandela from prison in South Africa. However, he also knew that there was no way that Mr. Mandela could ever be compensated for the 27 years of anguish, pain and destroyed illusions taken from him. Mr. Mandela was free at last, but it could never be forgotten that the racist Government of South Africa had stolen a great part of his life.

5. His Government, which viewed torture as the most heinous of human rights crimes, was committed to eradicating it wherever it festered, and urged all members of the Commission to adopt a similar approach in utter disregard of the political views of the Governments or individuals involved.

6. Torture was not always condemned for what it signified - the practice itself. Moreover, there were those who used diplomatic sophistry to support régimes that represented the worst political tradition in the world and engaged in systematic torture. He therefore wished to spotlight a few alarming examples of torture that could not pass unmentioned.

7. His delegation was especially alarmed at the human rights atmosphere in Iran where, according to various human rights groups and eyewitness accounts, flogging and stoning executions were common methods of torture, as were threats of sexual abuse of female prisoners and female relatives of male prisoners. Over 1,200 political prisoners had, it was alleged, been executed in 1988.

8. Iraq's human rights situation had still been abysmal in 1989. Opposition to government policy was stifled and the intelligence services utilized extralegal means, including torture, summary executions and disappearances. It was clear that both physical and psychological torture were used by the authorities, especially the Iraqi Security Police.

9. His delegation was also alarmed at the persistent reports of human rights violations in Tibet, where officials had rebuffed diplomatic requests to visit prisons and to discuss individual human rights cases. On 29 November 1989, the Special Rapporteur had sent an urgent appeal to the Government of China concerning Tseten Norgye, from Lhasa, who was reported as being held, without charge, in the Chakpori detention centre for having distributed Tibetan propaganda. It was alleged that he had lost one of his eyes as a result of brutal torture during his interrogation.

10. The human rights situation in Myanmar continued to be of urgent concern to his delegation. According to Amnesty International, thousands of people had been killed and thousands more arrested during widespread protests against military rule.

11. In Nicaragua, the Sandinist Government had murdered the opposition leader Leopoldo Tablada. In addition, State Security had threatened opposition political leaders, attorneys and candidates, thereby causing the Organization of American States to state that the intimidation and violence raised doubts about the possibilities of a fair and honest election in Nicaragua.

12. In Cuba, there had been a new wave of unprecedented repression. A cameraman from Czechoslovakia had been brutally beaten by the Political Police. Dozens of militants of the Youth Communist Party who had shouted "perestroika" and "free elections" during a party rally had been arrested and tortured.

13. In a report on Cuba issued in December 1989, Amnesty International had referred to mistreatment in prisons and illegal detention and stated that several human rights activists had been imprisoned. It had also stated that, in 1988, a wave of repression had followed the visit by the United Nations Working Group.

14. In 1989, the Centre for Human Rights had received denunciations from the Cuban people about torture. He himself had served as a conduit for the transmission of hundreds of those denunciations, which were all irrefutably documented.

15. In short, the international human rights community could not and should not tolerate any deviations from legitimate and acceptable government behaviour. Only by making a serious and concerted effort to expose such practices wherever they persisted would the forces of good triumph over the forces of evil.

16. Mrs. dos SANTOS PAIS (Portugal) said that her delegation was greatly concerned at the information contained in the two reports under consideration, submitted by the Special Rapporteur on questions relevant to torture (E/CN.4/1990/17 and Add.1) and the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13), on actions carried out in various countries against adults and also against children, despite the inability of the latter to defend themselves against such attacks and the harmful effects they would have on their future development. Another point common to the two reports was the reference to exceptional situations, it being recognized that situations involving civil war and internal conflict frequently led to the use of torture and disappearances.

17. Aware of the atrocity of those violations with respect to children, her delegation had paid special attention to the preparation of the Convention on the Rights of the Child, which had recently been approved and signed by her Government. That text would certainly help to increase awareness by the international community and to strengthen the protection of the rights of children throughout the world.

18. That reality made it necessary to strengthen the legal framework relating to such situations in such a way as to ensure the protection of the rights of individuals, in particular the access to courts and the rights of defence. Special attention should be given to the remedy of habeas corpus, which it should be possible to invoke against any abuse of power and which should not be subject to restrictions during exceptional situations when its application was more necessary than ever.

19. The Commission might be interested to know that, in the course of its second constitutional revision, in 1989, the Parliament of her country had paid particular attention to the question and had strengthened the guarantees for the protection of fundamental rights.

20. The two reports recognized the decisive role of official visits. Their value was stressed, particularly in emergency situations where irreparable damage could be prevented. However, they were also essential where it was necessary to collect information either from the victims or members of their families or from the Government in order to determine the situation prevailing in a given country or region.

21. That importance was reflected in the European Convention against Torture, which had been ratified by a number of countries including Portugal, and which, through unheralded visits, instituted a non-judiciary mechanism of a preventive nature.

22. Her delegation agreed with the Special Rapporteur that an invitation to visit a country did not necessarily imply any admission of the practice of torture there.

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23. She welcomed the co-operation established with the Governments of Korea and Turkey in respect of the recommendations made the previous year by the Special Rapporteur. Through the information they had provided on the measures taken at the legislative level or on the exercise of internationally recognized rights, the two Governments had helped to strengthen the dialogue established and improve the system designed to protect human rights in their countries.

24. The two reports also recognized the important role that could be played by increasing awareness of and providing information on the roles of the Special Rapporteur and the Working Group with regard to the prevention of human rights violations. The training of those responsible for the application of the law, was of great importance. That was, moreover, an aspect to which Portugal attached basic importance, as recently reflected in its dialogue with the Human Rights Committee during the presentation of its second report under the International Covenant on Civil and Political Rights.

25. Recognizing the complementary nature of their actions, the Committee against Torture and the Special Rapporteur had stressed that one field of activity in which they could strengthen that convergence was precisely that of the prevention of torture through education and training programmes. Both reports recognized that situations involving torture and disappearances very frequently occurred where someone was deprived of freedom. That had led them to stress the decisive importance of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173.

26. After referring to several provisions of the text, she said that the application and respect for the Body of Principles were effective means of preventing human rights violations, in particular cases involving torture and disappearances. In view of the importance of that text and convinced of the need to ensure respect for the principles it contained, her Government had had it translated into Portuguese and disseminated by the services connected with the Ministry of Justice.

27. However, the various cases mentioned in the two reports under consideration showed that situations of torture and disappearances continued to exist. One such case was that of East Timor where the Apostolic Administrator of Dili, Monsignor Belo, had given in a letter to the Apostolic Nuncio at Jakarta, the names of seven Timorese who had been badly beaten by security personnel, subsequent to the visit by His Holiness, the Pope. It had also been reported that persons suspected of compiling information about human rights and distributing it to the people had been arrested and tortured, or had disappeared. There was evidence that persons suspected of being opposed to the régime imposed by Indonesia on Timor had been detained, tortured and subjected to ill-treatment.

28. As a general rule, the suspects were kept in detention centres for periods ranging from a few hours to several weeks and submitted to physical and psychological abuse before their release. Very few of them were formally indicted or tried. Political detainees were transferred to detention centres under the control of civilian authorities only after they had been formally indicted. That reality was quite remote from the spirit of the Body of

Principles adopted by the General Assembly and strengthened her delegation's conviction that the human rights situation in East Timor deserved increased attention.

29. In that connection, she mentioned the difficulties which humanitarian organizations and independent observers faced in gaining access to the territory and the atmosphere of fear prevailing there, as reflected by the report of the Working Group on Enforced or Involuntary Disappearances. The international community could not pass over in silence that situation of fear and tension.

30. Mrs. TOURETSKAYA (Union of Soviet Socialist Republics) said that her delegation had already informed the Commission of the considerable work being done in the Soviet Union to improve criminal legislation and bring it into line with universally recognized standards. From the constitutional point of view, her country had established a system for monitoring legality as part of the efforts being made to create a state of law.

31. Her Government was following closely the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It assessed with some optimism the process of universalization of the Convention and reiterated its appeal to those Governments which had not yet done so to ratify that important international instrument as soon as possible. While it was still difficult to evaluate fully the effectiveness of the monitoring mechanism set up under the Convention, it could be stated that the work of the Committee against Torture was proceeding successfully, as noted in General Assembly resolution 44/144.

32. One rather serious problem remained, that of co-ordinating the activity of the Committee against Torture and the work of the Special Rapporteur on questions relevant to torture. The results of the exchange of views that had taken place between the Committee and the Special Rapporteur were reflected in the recommendations of the Committee, which her delegation fully supported.

33. She recalled that, at the time of the establishment of the post of Special Rapporteur, the Convention had not yet entered into force. It had been initially assumed that the Special Rapporteur would function until such time as the mechanisms provided for by the Convention entered into operation. It was not her delegation's intention to cast doubt on the importance of the work done by the Special Rapporteur, particularly since the machinery established under the Convention was still by no means universal. Nevertheless, it was essential to be forward-looking and to take steps to avoid duplication of work.

34. An exchange of views should be held concerning the possibility of defining more precisely the the Special Rapporteur's mandate in view of the contacts he had had with the Committee. The most correct approach would probably be to consider that question in detail when members had a clearer picture of the problems connected with mechanisms existing in the human rights field, whether established under international instruments or not.

35. She stressed the importance of studying the various aspects of the administration of justice. The most recent document prepared on the subject

was the draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, adopted by the Commission at its forty-fifth session.

36. It must be recognized that existing international human rights standards required further clarification. Some standards had been set forth in documents in the form of recommendations and had not yet become legally binding at the international level. In that connection, consideration might be given to stressing the importance of States voluntarily including in their legislation the standards set forth in the relevant United Nations resolutions.

37. In conclusion, she said that while recognizing the great value of the legal codification activity of various international bodies on questions of concern to the Commission, her Government stressed the decisive importance of genuine efforts by each State to improve its national legislation and to create a harmonious judiciary system that guaranteed the effective protection of human rights and fundamental freedoms.

38. Mr. RIETJENS (Belgium) said that the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1990/17 and Add.1) had once again provided a detailed overview of the incidence of torture in the contemporary world. As pointed out by the Special Rapporteur, the fact that the number of allegations transmitted to Governments was still increasing did not in itself mean that the incidence of torture was also increasing. Likewise, the number of allegations submitted to certain Governments should not be taken as an indication of the extent of the practice of torture in those particular countries. The fact remained, however, that the allegations contained in the report were those deemed by the Special Rapporteur to require clarification from the Governments concerned. It was particularly alarming to note that a number of them concerned the torture of children and adolescents, particularly at a time when the world had welcomed the recent adoption of the Convention on the Rights of the Child. His Government supported the general recommendations in paragraph 272 of the report.

39. Any allegation of torture brought to the attention of a Government by the Special Rapporteur should, at very least, result in an appropriate inquiry by the competent authorities, which should be required to communicate the results. It was disappointing, therefore, to note that, of the 48 States contacted by the Special Rapporteur, only half had replied. He was aware of the fact such silence did not necessarily imply a refusal to co-operate with the Special Rapporteur, and that the complexity of some situations required more time for a reply. Accordingly, the mandate of the Special Rapporteur should be extended over a longer period, so that Governments would be able to reply with the thoroughness required.

40. He welcomed the account of the visits paid by the Special Rapporteur to certain countries at the invitation of their Governments. Visits of that kind gave the Special Rapporteur an opportunity for exchanges of views with local authorities on the measures taken to prevent torture. He also welcomed the manner in which the Governments of the Republic of Korea and Turkey had reacted to the Special Rapporteur's previous recommendations, and hoped that, following that example, other Governments would take the Special Rapporteur's recommendations into account.

41. The problem of enforced disappearances remained an alarming one. During the previous 10 years, no fewer than 19,000 cases had been transmitted by the Working Group on Enforced or Involuntary Disappearances to 41 Governments. The total number of cases reported to the Working Group exceeded 50,000 and the number of clarified cases remained minimal. His delegation reminded States that they were under an obligation to endeavour to clarify such cases, even when there had been a change of Government.

42. He welcomed the growing number of Governments which had invited the Working Group to visit their countries, and expressed his appreciation of the attitude shown by the Governments of Mexico, Cyprus, Peru, Guatemala and Colombia, which had made a constructive approach possible. He shared the hope expressed by the Working Group that the Commission would consider ways of developing similar co-operative relations with regard to the follow-up of its specific recommendations to Governments. It was only through co-operation and determination that the international community could effectively tackle the practice of enforced disappearances. Accordingly, he was in favour of significantly extending the Working Group's mandate.

43. Mrs. KLEOPA (Cyprus) said that there had been some positive developments in the global efforts to eradicate torture, namely, the increase, however slow, in the number of States which had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the establishment of the Committee against Torture, which would considerably strengthen the protection of persons deprived of their liberty against torture or other inhuman treatment or punishment; the adoption by the General Assembly of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the launching by the United Nations of a World Public Information Campaign for Human Rights.

44. Despite those developments, however, it was saddening to read in the Special Rapporteur's report (E/CN.4/1990/17 that torture still remained a common phenomenon in the contemporary world. Torture, by whatever means practised, was aimed at the mental and physical disintegration of the individual and was as such an outright violation of the inherent dignity of man recognized by the Universal Declaration of Human Rights. It was essential, therefore, that the provisions of the relevant Conventions which provided guarantees against torture should be fully implemented.

45. Her delegation fully endorsed the Special Rapporteur's recommendations and believed that they should constitute guidelines for action by the international community and individual Governments with a view to eradicating torture.

46. Turning to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13), she said that its conclusions were very disturbing. The international community must be vigilant and lend full support to the Working Group so as to enhance its authority and credibility.

47. As for the persons missing in her own country, she thought it indeed regrettable that the Committee on Missing Persons in Cyprus, which had been operating under the auspices of the United Nations since 1981, had so far been unable to reach any conclusions and thus alleviate the suffering of the relatives of the missing persons. It would seem that its most serious

difficulties stemmed from the need to produce high-quality evidence that would be convincing to the families concerned. The Committee would, she hoped, intensify its efforts so that results could be achieved in the near future. Her Government had always been and continued to be in favour of the effective functioning of the Committee and would continue to co-operate with a view to resolving the humanitarian issues involved.

48. Mrs. LI Yanduan (China) said that her Government had consistently opposed torture and other cruel, inhuman or degrading treatment or punishment. Over the years, her country's legislative, judicial and administrative bodies had achieved prominent results in effectively opposing torture and ensuring the rights of the individual and the democratic rights of citizens.

49. The Chinese Constitution, criminal law, criminal procedure and regulations relating to arrest, detention and administrative penalties for public security violations all clearly stipulated that freedom of the person was inviolable. The rights of the individual and democratic rights of citizens were protected from unlawful infringement by any person or organization. Public officials and members of the security forces were subject to sanctions if they violated those provisions.

50. Chinese law protected the legitimate rights and interests of those serving sentences under criminal laws. Penalties were intended not just to punish but also to reform and rehabilitate prisoners. The State helped criminals to become aware of the heinousness of their offences through education and labour during their term of imprisonment.

51. China's labour reform institutions had a humanitarian policy towards their inmates. Corporal punishment was strictly prohibited and the inmates' medical care and safe working conditions were guaranteed.

52. In order to prevent abuses of power, the public security organs, public prosecutors and courts functioned independently and monitored one another. Moreover, citizens were entitled to assert their lawful rights and interests through the judicial channel and to be compensated for any illegal infringements thereof by judicial or administrative authorities. The State had the obligation to punish those directly responsible for such violations.

53. Her country was a party to the Convention against Torture. Anyone committing the offences defined in the Convention was subject to the jurisdiction of Chinese law. Her Government had recently submitted to the Committee against Torture its first periodic report on the measures taken to implement the Convention.

54. The Special Rapporteur's report (E/CN.4/1990/17) contained some paragraphs relating to her country while her Government had always done its utmost, in the spirit of co-operation, to examine the communications transmitted by the Special Rapporteur and to respond to them to the extent possible, the lack of details in some communications had made its task extremely difficult. The report in question contained some incorrect information, particularly in paragraph 43, which had been provided by sources hostile to her Government and should not have been included. Other allegations listed in the report were entirely groundless and should be rejected.

55. With regard to the case of Tseten Norgye, mentioned in paragraph 44 of the report, her Government, after extensive investigations, had been unable to verify the existence of a prisoner by that name. As mentioned by the Special Rapporteur, the Chinese Government had already forwarded a reply in connection with that case, but owing to lack of time, the reply had not been included in the report.

56. Mr. Ditchev (Bulgaria) took the Chair.

57. Ms. ANDREYCHUCK (Canada) said that the Special Rapporteur had underscored the critical importance of State co-operation with the various United Nations bodies responsible for examining human rights questions. States which had responded to his queries were to be commended, as were those which had extended an invitation to the Special Rapporteur to visit their countries and gain a first-hand appreciation of the situation there. Unfortunately, the number of States extending such invitations, and indeed, responding to inquiries, remained low. She urged those States contacted by the Special Rapporteur to respond as promptly as possible and with as much detailed information as was available.

58. Many of the Special Rapporteur's observations were disturbing, but none was more alarming than his report that many allegations had been received recently of the torture and mistreatment of children and juveniles. A more effective international response to that phenomenon was sorely needed.

59. Of the States contacted by the Special Rapporteur, more than 25 were not parties to the Convention against Torture and therefore not subject to the jurisdiction of the Committee against Torture. Moreover, the nature and scope of the Special Rapporteur's procedures - in many ways different from those of the Committee - were equally applicable to States which were and were not parties to the Convention. She therefore strongly supported the renewal of the Special Rapporteur's mandate for an appropriate term.

60. Involuntary disappearances remained an endemic problem for the international community, despite efforts to reduce such occurrences, as borne out in the Working Group's report (E/CN.4/1990/13). She emphasized her particular support for two of the Working Group's observations, namely, the need to ensure appropriate follow-up on recommendations concerning specific situations, and the need to supplement Secretariat resources which played a key role in the fulfilment of the mandate of all thematic rapporteurs. It was absolutely vital that the mandate of the Working Group should be renewed, so that it could continue its important work.

61. The Commission's response to human rights abuses affecting persons who were under detention must not only address individual cases, but must also entail the elaboration and implementation of specific standards, as well as proper training for persons serving in the administration of justice. A number of initiatives of that kind were currently in progress under United Nations auspices and should be strongly encouraged. The forthcoming Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, for example, would address a number of issues related to the administration of justice, which naturally complemented the work being done in the Commission and Sub-Commission on Prevention of Discrimination and Protection of Minorities.

62. While the prevention of human rights abuses must remain the paramount goal of the Commission, it was also important to give attention to related issues, such as the rehabilitation of the victims. The United Nations Voluntary Fund for Victims of Torture was an excellent example of what could be accomplished in that regard. However, much remained to be done. She therefore welcomed the proposal of the Sub-Commission for a study of that important question and urged the Commission to recommend its approval to the Economic and Social Council.

63. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was an important recent example of United Nations progress in standard-setting. It was crucial that all States should be made aware of the standards set out in the Body of Principles and other human rights instruments, and that the appropriate employees of all States should receive proper training to ensure respect for those standards. She also saw a considerable potential in the idea, explored in a note by the Secretary-General (E/CN.4/1990/12), of developing model texts for national legislation to give effect to international standards in that area.

64. Her Government continued to be preoccupied with the welfare of persons who were confronted with obstacles in seeking to exercise the right to freedom of opinion and expression. The working paper prepared by the Sub-Commission's Special Rapporteur (E/CN.4/Sub.2/1989/26) offered significant insights into the intrinsic relationship between freedom of expression and the other rights and freedoms tied up with the notion of political participation. Her delegation would, once again, be working with others to advance the Commission's work in that area and the Special Rapporteur's suggestions would be most useful in that regard.

65. Mr. ZURITA (Spain) said that his delegation was most concerned that torture still remained a common phenomenon in the world. Especially alarming were the cases of torture involving children and minors referred to in the report (E/CN.4/1990/17, para. 260). His delegation urged the Special Rapporteur to give maximum priority to cases of that nature when communications were received.

66. His delegation had taken note with interest of the information provided on the visits by the Special Rapporteur to Guatemala, Honduras and Zaire and hoped that the Governments of those countries would promptly implement his recommendations. Such visits strengthened the Special Rapporteur's moral authority and demonstrated the will of the Governments concerned to co-operate with the Commission,

67. His Government attached great importance to the implementation of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, approved by the General Assembly on 9 December 1988, and hoped that the Member States would take steps to incorporate those principles into their domestic legislation.

68. His delegation was convinced of the usefulness of contacts between the Special Rapporteur and the Committee Against Torture. Furthermore, at the regional level in Europe, the Special Rapporteur should follow closely the activities of the Committee established by the European Convention for the

Prevention of Torture. That Committee had the authority to visit places of detention without prior notice. The Special Rapporteur, and through him the Commission, could benefit greatly from its experience.

69. The report of the Special Rapporteur contained two allegations of torture concerning Spain. As the Special Rapporteur pointed out, those allegations had been communicated to the Spanish Government on 14 November 1989 and, while it fully intended to provide an adequate and detailed reply to them, the time that had elapsed between the receipt of the Special Rapporteur's letter and the closing date for the report's publication had been too short. His delegation assured the Commission that the Special Rapporteur would very shortly receive information on those two cases.

70. Enforced or involuntary disappearances constituted one of the most appalling violations of human dignity. His delegation was very concerned at the increase in the number of alleged cases appearing in the report (E/CN.4/1990/13), the growing number of countries involved and the high level of unresolved cases.

71. His Government agreed with the conclusions of the report that the impunity enjoyed by individuals and groups responsible for the kidnappings and murders was due to the institutional paralysis of the judicial system in certain countries and the leniency of military courts. The Judiciary was the best, and, in a number of cases, the sole guarantee of due process in countries in which the Government's attitude was not openly in violation of human rights but was permissive towards such violations. Similarly, it was unacceptable that cases of the kidnapping, murder or torture of civilians should be judged by military courts. The Government alone was responsible for such cases of impunity, and it was for the Government to remedy them.

72. Those Governments to whom the Working Group had addressed recommendations should provide that body with information on those cases so as to demonstrate to the Commission their willingness to promote human rights in their countries.

73. Ms. BILKEY (Observer for New Zealand) said that torture or enforced or involuntary disappearances must be kept under close and constant scrutiny, the eradication of those repugnant forms of human rights abuse being a major goal of the Commission. The human rights machinery of the United Nations was playing a significant role in working towards the achievement of that goal.

74. Less than one third of the Member States had become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and only 23, of which New Zealand was one, had accepted the competence of the Committee against Torture to examine complaints against them by individuals and other States. Her delegation urged all States that had not yet done so to consider becoming parties to the Convention as a matter of the highest priority.

75. The Committee against Torture was entering its third year, and it was important for States parties to honour their financial obligations under the Convention so that the Committee could function properly. Her delegation welcomed the dialogue established between the Committee against Torture and the Special Rapporteur, whose mandate should be strengthened, and it urged Governments to provide him with the fullest possible information on the cases that he brought to their attention.

76. Many States had impressive constitutional prohibitions against the practice of torture, but that would not help a potential victim unless the legal system contained built-in protection, such as an automatic and immediate right to legal counsel for detainees, and to medical care and regular medical examinations as well as full and proper access to all detention centres. Such protection would help prevent the occurrence of torture.

77. Victims of torture and their families must be aware of their rights, and perpetrators and would-be perpetrators of their obligations. Governments must ensure that training courses for law-enforcement personnel stressed the need to respect the physical and mental integrity of persons under their control. Her Government welcomed the efforts of the Centre for Human Rights in that regard and supported the drafting of model texts for national legislation as a practical way of helping to protect human rights at the national level.

78. The impact of torture on victims and their families was severe and long-lasting. The Voluntary Fund for Victims of Torture provided invaluable humanitarian assistance in the painful process of rehabilitation. Her Government supported the Fund and strongly urged other Governments to contribute to it.

79. Her Government commended the Working Group on Enforced or Involuntary Disappearances for its important work in responding to the alarming number of cases of disappearances brought to its attention. It was, however, unfortunate that only 7 per cent of the cases raised by the Working Group had yet been clarified, and her delegation therefore urged Governments to co-operate with that body. The Commission must also give the Working Group the support it needed to follow up on outstanding cases.

80. Her delegation noted with real concern the reference in the Working Group's report to the increasing incidence of harassment of witnesses and relatives and agreed that the Commission should keep a close eye on that disturbing development.

81. Mr. TCHEUL (Observer for the Democratic People's Republic of Korea) said that his delegation shared the concern voiced by previous speakers about arbitrary detention and the inhuman treatment of detainees, which continued despite the unabated efforts of the Commission.

82. International public opinion was deeply concerned at the steady increase in the number of cases of detention, torture and other forms of repression in South Korea. The Government of South Korea had admitted to 2,094 arrests in 1989 for "political reasons".

83. His delegation wished to draw the Commission's attention to the cases of Pastor Moun Ik Hwan and the female student Rim Sou Kyeung. In March 1989, Mr. Moun had visited the northern part of the Korean Peninsula in the hope of putting an end as soon as possible to the tragedy of the divided nation. Upon his return to South Korea he had been arrested and had been sentenced, on 29 January 1990, to life imprisonment for activities that were not regarded as crimes anywhere except in South Korea. His visit to Pyongyang had not been a secret, and he had criticized neither North or South Korea during his visit, but had simply spoken out in favour of reunification of the country.

84. Mr. You Weun Ho, who had accompanied Mr. Moun, had been tortured by the South Korean CIA. He had been prevented from sleeping for 20 days and had been stripped naked and beaten in an effort to extract a "confession", which he had signed without even reading.

85. As for Miss Rim, she had attended the 13th World Festival of Youth and Students at Pyongyang in July 1989 as a representative of "Djeundaihyeup", a South Korean student organization with one million members. Upon her return to South Korea, she had been arrested, together with Fr. Moun Kyou Hyuen, a priest, and they had been sentenced to 10 years and eight years in prison respectively. All these persons had been accused of such absurd crimes as "infiltration" and "taking orders from North Korea".

86. On 7 July 1988, in a "declaration for democracy", South Korea had proclaimed that contacts would be allowed between North and South Korea. Practice had shown, however, that such "democracy" served only to conceal from world opinion the true state of human rights in South Korea and that persons who innocently trusted in it were sent to prison.

87. His delegation called upon the Commission to give special attention to the arbitrary detention of Mr. Moun, Fr. Moun and Miss Rim and to take all steps within its power to obtain their release as soon as possible.

88. Mr. da SILVA (Sri Lanka), speaking in exercise of the right of reply, said that his Government unequivocally condemned the pernicious practice of torture. Sri Lanka's laws provided for payment of compensation to the victims of torture, payable by the State if the person responsible had been a State official. Torture was punishable by varying sentences, including the death penalty if the victim had died of his injuries.

89. As the Attorney-General of Sri Lanka, he could give the Commission the categorical assurance that if anyone provided him with credible and cogent evidence of any person inflicting torture on another person within the jurisdiction of the Sri Lankan courts, he would institute an investigation and prosecute the offender.

90. The insurgents in Sri Lanka were conducting a campaign of murder and torture and had abducted members of the families of security-force personnel. That had unfortunately led to revenge being taken by a few individuals. The Government of Sri Lanka had issued clear orders that any such incident should be investigated and the perpetrators subject to trial and punishment.

91. The name of a Sri Lankan lawyer, Mr. Wijedasa Liyanaratchi, allegedly killed for his human rights activities had been mentioned by one speaker. Mr. Liyanaratchi had been not only a lawyer but also a member of the Politburo of the insurgent group. He had been arrested on unimpeachable evidence of involvement in the activities of the insurgents.

92. Whether or not he had been an insurgent, any assault upon him was an offence under Sri Lankan law. The speaker had failed to mention, however, that a Superintendent of Police and two of his subordinates were facing trial in Sri Lanka on account of that incident. He himself had personally filed the indictment on behalf of the State and could assure the Commission that justice would be done.

93. Mr. MEJÍA UCLÉS (Observer for Honduras), speaking in exercise of the right of reply, said that his Government, which was studying the recommendations made by the Special Rapporteur, Mr. Kooijmans, following his visit to Honduras, would soon request the Centre for Human Rights to co-operate on a technical mission to Honduras to prepare a human rights training programme for the security forces. Outstanding reports of disappearances were being examined, and the results would soon be transmitted to the Working Group. The Special Rapporteur had noted in his report (E/CN.4/1990/17, para. 254) that there was no reason to doubt the sincerity of the Honduran Government's intention to take its responsibility with regard to the protection of human rights seriously. His delegation took the opportunity to reaffirm that commitment.

94. Mr. ANCOG (Philippines), speaking in exercise of the right of reply, said that the representatives of the International League for the Rights and Liberation of Peoples, the Regional Council on Human Rights in Asia and the International Commission of Health Professionals for Health and Human Rights had made references to alleged human rights violations in the Philippines.

95. As for the allegation that paramilitary groups in the Philippines were interfering with the rights of health professionals, the Philippine Commission on Human Rights had investigated a number of complaints of that nature. Incidents of alleged interference had been reported because health professionals, including foreigners, had insisted on proceeding to and conducting their work in the countryside in areas where military operations against insurgents were in progress.

96. Anyone who entered those areas, especially strangers and foreigners, were stopped, questioned and sometimes searched for weapons. It would have saved a lot of trouble if they had informed the military authorities in advance of the purpose, area, time and dates of their visit so that they would not be mistaken for one of the groups reportedly providing financial and logistics support to the rebels. In fact, if requested, the military would have given them a security escort during the visit.

97. With regard to the disappearance of Nonna Santa Clara and Angelina Llenarisas, the Philippine Commission on Human Rights had taken up that case on its own initiative, having announced on the radio on 29 April 1989 that the two social workers had reportedly been abducted on 26 April 1989. Initial investigations seemed to indicate that military intelligence personnel might have been responsible for their alleged abduction, but nothing conclusive could yet be established, because persons who had reportedly witnessed the abduction were unwilling to make a statement. The case was therefore on the watch-list of the Philippine Commission on Human Rights, and its investigators continued to monitor any developments that could lead to a breakthrough.

98. As for the reported harassment and arrest without a warrant of Father Ben Alforque, no complaint had been filed with the Philippine Commission on Human Rights and he was thus unable to verify the allegation. Considering the prominence of Father Alforque and Eric Torres, it would have been perfectly easy for them to file their complaints, and he wondered why they had not done so if their human rights had been violated.

99. One of the NGOs had asserted that members of the armed forces of the Philippines, who had killed civilians and damaged property, had been allowed to return to their barracks. In reality, while the ordinary soldiers had been allowed to go back, the officers who had plotted or actually participated in the coup, some of whom were generals and colonels, had been immediately indicted for rebellion and were currently incarcerated. President Aquino had ordered that their trial be expedited and, if found guilty after due process, they would be punished to the full extent of the law.

100. The International League for the Rights and Liberation of Peoples had reported in general terms alleged incidents of arrests and detention, torture and forced disappearances in the Philippines. Most of those cases had already been taken up in his delegation's recent comments. The League had also said that 14,207 arrests had been recorded during the first three years of the Aquino Government. His delegation asked the League to provide it with the data so that the Philippine Commission on Human Rights could look into those cases.

101. Mr. ILIOPOULOS (Observer for Greece), speaking in exercise of the right of reply, said that his delegation thanked the representative of the World Federation for Mental Health for the attention he had paid to psychiatric institutions in Greece. While his approach had been a positive one, the Greek delegation, if contacted in advance, would have gladly informed him about Greece's efforts in the matter.

102. With regard to the Leros institution, he wished simply to state, without referring in detail to the somewhat exaggerated media accounts that the Ministry of Public Health had carried out, since 1982, a series of programmes aimed at improving and restructuring the country's psychiatric institutions, a task in which the collaboration of international bodies was greatly appreciated. There had been some delay in implementing the Leros programme, but an action plan had been activated in the summer of 1989. His Government was determined to implement all programmes designed to improve conditions for the mentally-ill in Greece, with the intention of reaching the highest internationally approved standards in that area.

103. Mr. URRUELA PRADO (Observer for Guatemala), speaking in exercise of the right of reply, said that the current, freely elected Government of Guatemala repudiated the practice of torture; Guatemala had ratified the Inter-American Convention to Prevent and Punish Torture and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. If cases of torture existed, the perpetrators were unknown to the Government, as pointed out in the report by the Commission's Special Rapporteur (E/CN.4/1990/17).

104. The matter capriciously referred to by representatives of certain non-governmental organizations in regard to a request for the appointment of an "impartial special rapporteur", had occurred during a period of transition and of some serious human rights violations, at a time when the post of Procurator for Human Rights had been vacant. Such appointments were within the purview of the National Congress which had subsequently nominated a prominent jurist for the post which had since been expanded by the opening of offices throughout the country on an ombudsman basis. The move to request the Commission on Human Rights, through the National Reconciliation Commission, to appoint a special rapporteur for Guatemala took the form of a draft resolution

submitted by a self-styled "Commission on Human Rights in Guatemala", whose headquarters were in Mexico. Although it did not form part of the National Dialogue commissions, it was able to submit suggestions to them. The Human Rights Commission on the National Dialogue had not even taken up the proposal, let alone adopted it as a resolution.

105. Mr. THAYEB (Observer for Indonesia), speaking in exercise of the right of reply, said that the representatives of Portugal and certain non-governmental organizations had presented some distorted information about the situation in East Timor. With regard to the alleged repressive incidents on the occasion of a Papal Mass, the fact was that some 27 of over 2,000 persons attending the event, had been apprehended for causing a disturbance, which the Bishop himself had deplored in a subsequent newspaper article. Of the 27 persons, 11 had been detained; charges had been substantiated against 6 of them, of whom only 1 was remanded for appearance in court. The names of all concerned could be made available.

106. In the case of the United States Ambassador's visit to the local Governor on 17 January 1990, a number of youths had incited a brawl, despite the earlier promise of an interview with the Governor. The fracas had resulted in some cases of hospital treatment, but there had been no deaths. Indeed, the allegations about the incident had been condemned by the United States Ambassador and the Australian Broadcasting Service. Another incident referred to had stemmed from incitement to unrest by the so-called St. Anthony Foundation; some of the instigators had been tried, had served sentences and were currently free again.

107. Mr. KHORAMIAN KERMANCHAH (Observer for the Islamic Republic of Iran), speaking in exercise of the right of reply, said that it was nothing new for unfounded allegations about human rights violations to be made against his country on behalf of terrorist organizations, instigated chiefly by the United States, whose delegation ought to be paying more attention to the frightful situation in its own country's prisons, which were hotbeds of criminality.

108. The allegations made on behalf of a certain non-governmental organization had been voiced by a member of a terrorist group based in Iraq under the protection of that country and responsible, with it, for the deaths of thousands of his compatriots. The Islamic Republic of Iran had always striven, despite years of war, to promote human rights; its willingness to receive a United Nations mission proved that it had nothing to hide. His delegation esteemed the role of NGOs in human rights activities; but those organizations should not be exploited for political ends.

109. Mrs. NUNEZ DE ESCORCIA (Observer for Nicaragua), speaking in exercise of the right of reply, said that an incident in Nicaragua referred to by the representative of the United States had been a case of murder, for which the military personnel involved would be brought to trial. In that connection it had been noted, in a report issued in October 1989 by Americas Watch, that Nicaragua was unique, in the Central American region, in trying and punishing its own military personnel - a point also made by Amnesty International in a report published on 9 November 1989.

110. It was ironic that concern about the elections in Nicaragua should be voiced by the representative of a Government which did its utmost to interfere in Nicaragua's internal affairs; it was also dishonest to extract isolated details from three separate reports by the Organization of American States, which, in any case, had subsequently commented positively on Nicaragua's electoral process.

111. Mr. DAYAL (India), speaking in exercise of the right of reply, said that the representative of the International League for the Rights and Liberation of Peoples had made some allegations concerning violations of human rights by the Indian Peace-Keeping Force in Sri Lanka. India's armed forces were known throughout the world for their high standard of professional discipline, and the force in question had acted, throughout its term of duty, with commendable self-restraint. Any complaints had been thoroughly investigated, and most had been found to be baseless; in cases where charges had been upheld, punishment had been exemplary. The IPKF's withdrawal from Sri Lanka would probably be completed very shortly.

112. Mr. ROA KOURI (Cuba), speaking in exercise of the right of reply, said that the United States had again shown its disdain of the Commission by appointing a well-known puppet to appear as its representative and claim to speak on behalf of the victims of torture throughout the world. The victims he was thinking of were, perhaps, Cubans who had been tortured by the police of the former Batista régime, to which he had belonged, those imprisoned in the United States for political activities, or those tortured in detention in El Salvador, South Korea and Viet Nam under repressive Governments imposed by the United States or maintained with United States support.

113. There was no truth at all in claims about an "unprecedented wave of repression" in Cuba. Certainly, no one had been punished for having contacted the Commission's visiting mission in 1988. Any sentences being served were solely the result of law-breaking.

114. The incident involving the Czechoslovak journalist that had been mentioned had, as the Government of that friendly country well knew, nothing to do with the subject currently before the Commission. The persons concerned in the case had been duly charged. The United States representative should entertain no doubts that the will and the standard of conduct of the Cuban people could never be imposed upon by any imperialist Power.

115. Mr. ALDORI (Iraq), speaking in exercise of the right of reply, said, with reference to the statement made by the United States representative regarding his country, that the Constitution and laws of Iraq made torture a punishable offence, and the appropriate sanctions had been duly applied against the perpetrators of a number of incidents during the state of war. The means available to protect Iraqi citizens included special ombudsman offices throughout the country, which could deal, inter alia, with occasional injustices committed by police and administrative services.

116. The allegations made by the United States representative, however, seemed to imply that such abuses were a general occurrence, although not a single instance had been quoted in detail. Such an approach did not help the cause of human rights or the Commission in its work; his delegation rejected the allegations and their obvious motives.

117. The Government of Iraq adhered to the principles of human rights. It always collaborated fully with the Commission through the relevant special rapporteurs and working groups, and was ready at all times to provide requisite clarification on any matter. He called on the members of the Commission and the observer delegations to eschew all politically-motivated interventions.

118. Mrs. GONZALEZ MARTINEZ (Mexico), speaking in exercise of the right of reply, said that the United States representative had referred to Mexico, in a statement made during the previous meeting, in the context of what he had called "government-sanctioned torture", citing the death in 1985 of an enforcement officer of the United States narcotics agency. The fact was that, as a result of the incident in question, a number of persons had been tried and sentenced. The assertion, in the statement, that the officer in question had been tortured, and the associated implication that the Mexican Government had connived at such an abuse, were vehemently rejected. Likewise unacceptable was the insinuation in a European newspaper article that the involvement of two Mexican police officers in the incident pointed to a government link.

119. Her delegation asked the speaker, who had made his statement in Spanish, which was not his delegation's official language, to consider carefully what he had said and, in particular, to clarify whether his remarks reflected his Government's position, since of himself he had no authority to assert that another Government was implicated in such an incident.

The meeting rose at 1.10 p.m.

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Forty-sixth session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 February 1990, at 3 p.m.

Chairman: Mrs. QUISUMBING (Philippines)

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The meeting was called to order at 4.25 p.m.

STATEMENT ON EASTERN BEIRUT

1. The CHAIRMAN read out the following statement by the Commission on the situation in Eastern Beirut, to be transmitted to the President of Lebanon and to the Secretary-General of the United Nations:

> "The Commission on Human Rights, deeply shocked by the devastating effects of the fighting in Eastern Beirut which resulted in an incalculable violation of human rights, expresses its serious concern at the escalation of violence, the loss of life and the scale of the destruction affecting the civilian population caused by the deplorable events that have been and are taking place therein.
>
> The Commission calls for total respect of the sovereignty, territorial integrity and unity of Lebanon and launches an urgent appeal to the factions concerned for an immediate end to all military actions. This is essential in order to end the suffering of the civilian population, to help the wounded and to enable the provision of medical and other services.
>
> The Commission calls on all factions concerned to exercise the maximum restraint and urges them to adhere to the plan of settlement of the Lebanese crisis agreed upon in Taif, Saudi Arabia, which provides for a commendable resolution of the long suffering of all the Lebanese population and help them embark on a workable formula for reconciliation and reconstruction. To fulfil this noble objective, all Lebanese factions must join the efforts of President Herawi to restore peace in the country. It is necessary to ensure respect for the elementary rules of international humanitarian law, protection of civilians and full respect for the work of all international humanitarian organizations."

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 4) (continued) (E/CN.4/1990/L.4, L.6 and L.13)

Draft resolution E/CN.4/1990/L.4

2. Mr. LILLIS (Ireland), introducing draft resolution E/CN.4/1990/L.4 on behalf of the 12 Member States of the European Community, as well as Egypt, Japan, Morocco, New Zealand and Sweden, which had been joined by Austria, Lebanon, Turkey and the USSR, said that in the preambular part, the sponsors recalled the provisions of article 13, paragraph 2, of the Universal Declaration on Human Rights and affirmed that the Fourth Geneva Convention was applicable to all Palestinian and Arab territories occupied by Israel since 1967, including Jerusalem. The sponsors then indicated their concern at the recent suggestions that immigrants to Israel might be settled in the occupied territories. In the first operative paragraph, they affirmed that such settlement was illegal, because it contravened the provisions of the Fourth Geneva Convention and in paragraph 2, called upon the Government of Israel to refrain from settling immigrants in those territories.

3. The 12 Member States of the European Community had already stated their position on all aspects of that issue - including the aspect of immigration - in a statement made on 31 January 1990.

4. At the request of the representative of the United States of America, a vote was taken by a roll-call on draft resolution E/CN.4/1990/L.4.

5. Venezuela, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Belgium, Botswana, Brazil, Bulgaria, Canada, China, Colombia, Cuba, Cyprus, Ethiopia, France, Gambia, Ghana, Germany, Federal Republic of, Hungary, India, Iraq, Italy, Japan, Madagascar, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Portugal, Sao Tome and Principe, Senegal, Somalia, Spain, Sri Lanka, Swaziland, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela and Yugoslavia.

Against: None.

Abstaining: United States of America.

6. Draft resolution E/CN.4/1990/L.4 was adopted by 42 votes to none, with 1 abstention.

Draft resolution E/CN.4/1990/L.6

7. Mr. RATSIRAHONANA (Madagascar), introducing draft resolution E/CN.4/1990/L.6 on behalf of its sponsors, which had been joined by Afghanistan, Angola, Kuwait, Nicaragua and Yugoslavia, pointed out that it was in two parts. The preambular paragraphs in part A reproduced the broad lines of the text of resolution 1989/2, adopted by the forty-fifth session of the Commission. Furthermore, it took note of the latest report of the Special Committee (A/44/599), which had served as the basis for the draft resolution. The latter included a list of the violations of human rights perpetrated by Israel in the occupied territories, which were public knowledge and had been denounced during the general debate by members of the Commission, observers and representatives of non-governmental organizations.

8. Operative paragraph 1 was a condemnation of Israeli practices which constituted violations of human rights so flagrant that if the Commission refrained from condemning them it would be failing in its mission. In fact, no one could remain indifferent to the suffering endured by the Palestinian people in its own country. While the Commission should not set itself up as a court, in that particular case, it was bound to condemn such actions.

9. The sponsors of the draft resolution also thought that, like other United Nations bodies, the Commission should affirm the right of the Palestinian people to resist the Israeli occupation by all means.

10. The draft also included an urgent appeal to Israel to desist from all forms of violations of human rights in occupied Palestine and to respect the principles of international law. The second appeal to Israel was to withdraw from Palestine and the occupied Arab territories, as an indispensable condition for the ending of all the acts of violence committed in those territories.

11. Part B of the draft resolution focused on the application of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which had already been raised in Commission resolution 1989/2 B. The decisions taken in 1989 included resolution 1989/4 adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, as well as that of the ninth Summit of Heads of State or Government of Non-Aligned Countries held in Belgrade in September 1989. Both resolutions welcomed the accession of the State of Palestine to the 1949 Geneva Conventions because it was an event of major importance. In fact, according to a principle of international law, all parties were bound to observe those Conventions in respect of Palestine, which itself was bound to abide by them. Nevertheless, it had to be acknowledged that Israel continued to refuse to apply them, despite the resolutions adopted by various international bodies, in particular the Commission on Human Rights. Until there was a change of attitude in terms of respect for the Geneva Conventions, the Committee should retain the wording used in its previous resolution. In part B of the draft, the Commission condemned once more Israel's refusal to apply the Fourth Geneva Convention and in particular its violations of article 49 of that Convention by its policy of deportation and expulsion of Palestinian civilians from their country.

12. The adoption of the draft resolution would send a clear signal to Israel that the international community ardently wished the violations of human rights in the occupied territories to cease and the Geneva Conventions as well as the principles of international law as a whole to be applied. The sponsors sincerely hoped that Israel would heed that signal so that peace and security would once again prevail in that part of the world.

13. Mr. PACE (Secretary of the Commission) indicated that the following amendments should be made to part A of draft resolution E/CN.4/1990/L.6: in operative paragraph 3, the words "in occupied Palestine" should be replaced by the words "in the Palestinian territories and other occupied Arab territories"; in paragraph 6, the words "of occupied Palestine" should be replaced by the words "of the Palestinian territories and other occupied Arab territories".

14. At the request of the representative of the United States of America, a vote by show of hands was taken on part A of draft resolution E/CN.4/1990/L.6.

15. Part A of draft resolution E/CN.4/1990/L.6 was adopted by 39 votes to 1.

16. The CHAIRMAN, replying to a question from the delegation of Canada, stated that the vote had been on a substantive issue and not a procedural one.

17. Mrs. ANDREYCHUCK (Canada) said that, in that case, she wished the vote of her delegation to be recorded as an abstention.

18. The CHAIRMAN invited the members of the Commission to vote on part B of the draft resolution E/CN.4/1990/L.6. A separate vote was taken on paragraph 1.

19. At the request of the representative of the United Kingdom, a roll-call vote was taken on part B, operative paragraph 1, of draft resolution E/CN.4/1990/L.6.

20. Ghana, having been drawn by lot by the Chairman, was called upon to vote first.

21. The paragraph was adopted unanimously.

22. The CHAIRMAN said that the representative of the United States of America had requested a separate vote on paragraph 2.

23. Mr. RASHKOW (United States of America), speaking in explanation of vote, said that his delegation would vote against that paragraph because it contained an inaccurate statement. In fact, the self-declared State of Palestine clearly failed to satisfy the generally accepted criteria under international law for statehood and was not therefore eligible to become a party to a treaty. The only conclusion that could be drawn from the correspondence between, on the one hand, Switzerland, the depositary State of the Geneva Conventions, and the PLO, on the other, was that the latter had communicated its desire to accede to those Conventions. By communicating that correspondence to the States parties to those instruments, Switzerland had fully discharged its obligations. On the other hand, the inaccurate statement of the facts relating to the correspondence in part B, paragraph 2, of resolution E/CN.4/1990/L.6 constituted interference in the impartial exercise of the functions of the depositary State and constituted an unacceptable attempt to politicize the work of the Commission.

24. Mr. RAMLAWI (Observer for Palestine) said that he was surprised that the United States of America should venture to express an opinion on the attitude of the depositary State of the Geneva Conventions.

25. Mr. RASHKOW (United States of America), speaking on a point of order, recalled that observers might not address procedural matters.

26. The CHAIRMAN said that she would give the observer for Palestine the floor after the vote.

27. Part B, paragraph 2, of draft resolution E/CN.4/1990/L.6 was adopted by 32 votes to 10, with 1 abstention.

28. Mrs. RICO (Spain) asked that the record should show that her delegation had voted against part B, paragraph 2, of draft resolution E/CN.4/1990/L.6.

29. The CHAIRMAN said that the results of the vote had already been announced but that the comment by the delegation of Spain would be duly reflected in the summary record of the meeting. She invited members of the Commission to vote on part B of draft resolution E/CN.4/1990/L.6 as a whole.

30. At the request of the representative of Cuba, a vote was taken by roll-call.

31. The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Bangladesh, Botswana, Brazil, Bulgaria, China, Colombia, Cuba, Cyprus, Ethiopia, Gambia, Ghana, Hungary, India, Iraq, Madagascar, Mexico, Morocco, Nigeria,

Pakistan, Panama, Peru, Philippines, Sao Tome and Principe, Senegal, Somalia, Sri Lanka, Swaziland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela and Yugoslavia.

Against: United States of America.

Abstaining: Belgium, Canada, France, Germany, Federal Republic of, Italy, Japan, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

32. Part B of draft resolution E/CN.4/1990/L.6 was adopted by 32 votes to 1, with 10 abstentions.

33. Draft resolution E/CN.4/1990/L.6 as a whole was adopted.

Draft resolution E/CN.4/1990/L.13

34. Mr. MAHMUD (Bangladesh), introducing draft resolution E/CN.4/1990/L.13 on behalf of the sponsors, which had been joined by Afghanistan, Angola, Cyprus, Gambia, Lebanon, Nicaragua, and the United Republic of Tanzania, recalled that the question of the violation of human rights in the occupied Syrian Arab territories had been before the Commission for quite some time. Israel's decision to impose its laws, jurisdiction and administration in those territories had resulted in effective annexation, with the forcible imposition of Israeli citizenship (Syrian citizens in those territories being compelled to carry Israeli identity cards), the boycott of agricultural products and other repressive measures against the population. Those measures had already been criticized in other United Nations forums.

35. The intention of the sponsors of the draft resolution was to re-emphasize the Commission's concern at the human rights situation in those territories and to renew the call to the Israeli Government to desist from its activities, which contravened all universally recognized norms of international law and constituted a flagrant violation of the fundamental rights of the people of the occupied Syrian Arab territories. The sponsors also hoped that the draft resolution, which was moderate and based in large measure on the resolution of the previous session, would be adopted by consensus.

36. The CHAIRMAN invited the members of the Committee to vote by show of hands, at the request of the delegation of the United States of America, on draft resolution E/CN.4/1990/L.13.

37. Draft resolution E/CN.4/1990/L.13 was adopted by 42 votes to 1.

38. The CHAIRMAN invited delegations that so wished to explain their vote on the draft resolutions under agenda item 4.

39. Mrs. GONZALEZ MARTINEZ (Mexico), speaking in explanation of vote after the vote, said that, while her delegation had voted for draft resolution E/CN.4/1990/L.6, it wished to state that it had a number of reservations about some of its wording because it considered the terms used did not contribute to the realization of the primary objectives of the draft. Furthermore, the fact

that the delegation of Mexico had voted in favour of the draft resolution did not imply that it had adopted a final position on the legal situation of the territories in question.

40. Mr. WHITAKER SALLES (Brazil) said that the Brazilian delegation had voted in favour of all the draft resolutions considered under item 4 because the human rights situation in the occupied Arab territories had worsened during the past year. However, it would have preferred to have had certain passages in those drafts couched in more balanced language.

41. Mr. STEEL (United Kingdom), said that, in contrast to previous years, when his delegation had always voted against the draft resolution submitted for consideration under agenda item 4, his delegation had been able to support both part A of draft resolution E/CN.4/1990/L.6 and the entire draft resolution E/CN.4/1990/L.13 and had even been a sponsor of draft resolution E/CN.4/1990/L.4, concerning Israeli settlements in the occupied Arab territories. That new position had been the outcome of informal consultations between the Arab States and the countries of the European Economic Community. His delegation also thanked the sponsors of those draft resolutions for taking its concerns into account and endeavouring to solve the problems which similar draft resolutions had posed for it in the past.

42. However, his delegation maintained its reservations especially in respect of part A, paragraph 1, of draft resolution E/CN.4/1990/L.6, and the sixth preambular paragraph and part B, paragraph 2 of that draft. In fact, the United Kingdom had not recognized the State of Palestine proclaimed on 15 November 1988, and considered that Palestine's presumed accession to the four Geneva Conventions of 1949 had no legal effect.

43. Mrs. ANDREYCHUCK (Canada) said that her delegation had abstained in the vote on part B of draft resolution E/CN.4/1990/L.6 because of some of the language used in it, especially in paragraph 2. It had also voted against part B, paragraph 2, of the same draft resolution since Canada did not recognize the State of Palestine proclaimed by the National Palestinian Council in Algeria in 1988 in view of the fact that Palest[illegible] did not meet the internationally recognized criteria that determined statehood.

44. Mr. MORRIS (United States of America) said that the United States had always been in the forefront of efforts to promote respect for the fundamental right of individuals to move freely. It had, therefore, been among the first to welcome the recent developments in Eastern Europe, which permitted the increased exercise of the right of freedom of movement and migration.

45. For the same reason, his delegation supported a number of elements in draft resolution E/CN.4/1990/L.4. The United States was pleased that the Soviet Union had taken steps to permit Soviet Jews to emigrate freely to Israel. It also recognized that the Fourth Geneva Convention was applicable to the occupied territories and believed that the establishment of Israeli settlements in those territories was an obstacle to peace. However, his delegation had abstained in the vote on draft resolution E/CN.4/1990/L.4. In fact it could not agree to the first operative paragraph because it had not determined that it was productive to address the legal issue. Furthermore, it noted that the first preambular paragraph, while upholding the principle of freedom of emigration, also referred to the right of return. That was an

issue that could only be resolved in peace negotiations. His Government, however, was a strong supporter of family reunification for Palestinians and urged Israel to do more in that regard.

46. His delegation also objected to the use of the phrase "Palestinian and Arab territories" in the second preambular paragraph because the final status of those territories as well as of Jerusalem could only be resolved through negotiations. The United States, together with Egypt and Israel was continuing the efforts to initiate an Israeli-Palestinian dialogue which could lead to elections in the occupied territories and to negotiations on a comprehensive peace in the Middle East. His delegation hoped that the deliberations of the Commission would contribute to that effort.

47. With regard to draft resolution E/CN.4/1990/L.13, his delegation reaffirmed its position to the effect that Security Council resolutions 242 (1967) and 338 (1973) continued to apply in the territories under consideration. Any draft resolution on that question which failed to take account of those two resolutions or of the fact that the problem could be resolved only by negotiation between the parties, could be neither balanced nor constructive. Consequently, while recognizing the extreme nature of some of the measures taken by Israel and Israel's obligation to protect all persons under its jurisdiction, his delegation had voted against draft resolution E/CN.4/1990/L.13 as currently worded.

48. Mr. STIGLICH (Peru) said that although his delegation had voted in favour of the draft resolutions submitted to the Commission, it wished to emphasize that it did not approve of some of the language contained in them because it did not help to promote peace in the territories under consideration. The fact that it had voted in favour of those draft resolutions did not mean that Peru recognized the legal situation of the occupied territories or the international legal personality linked to accession to international humanitarian instruments.

49. Mr. RAMLAWI (Observer for Palestine) thanked all the countries that had voted in favour of draft resolution E/CN.4/1990/L.6. In reply to the statement by the representative of the United States concerning part B, paragraph 2, of the draft resolution, he wished to reaffirm that the depositary State of the Geneva Conventions had correctly discharged its obligations and to state that on 20 June 1989 it had received the instruments of accession of the State of Palestine to the four Geneva Conventions of 1949.

50. Furthermore, the State of Palestine had been created in conformity with the appropriate criteria, namely the existence of a territory and a people and its recognition by other States. A Palestinian territory existed and it was universally recognized to be currently occupied by Israel. The Palestinian people's struggle to exercise its right to self-determination was also recognized and supported by the Commission itself in many resolutions. Lastly, the presence of the observer for Palestine in the Commission was proof that the State of Palestine had its place within the community of nations. The fact that the United States of America had not recognized the State of Palestine did not mean that State did not exist. The Committee's adoption by an overwhelming majority, of part B, paragraph 2, of draft resolution E/CN.4/1990/L.6 and of the draft resolution as a whole was the best answer that could be given to the United States.

51. Mr. GLAIEL (Observer for the Syrian Arab Republic), speaking in exercise of the right of reply, said that he was surprised at what the representative of the United States had said about resolution E/CN.4/1990/L.13 on the occupied Syrian Arab territories. His delegation had supported an amendment to the text in the hope that the other delegations would maintain the positions they had worked out two months previously in the General Assembly. Most of the Western countries had in fact maintained their positions, but the delegation of the United States had voted against the present text whereas it had abstained two months earlier. Such a position would encourage aggressors and incite them to violate the most fundamental human rights even more. He thanked the delegations which had voted in favour of draft resolution E/CN.4/1990/L.13, and particularly Bangladesh, which had introduced the text.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 9) (continued) (E/CN.4/1990/L.5, L.7, L.8, L.14, L.9/Rev.1, and L.15).

Draft resolution E/CN.4/1990/L.5

52. Mr. SHARMA (India) introduced the draft resolution, which was sponsored by Algeria, Bangladesh, Bahrain, China, Cuba, Democratic Yemen, Egypt, Gambia, Ghana, India, Iraq, Jordan, Libyan Arab Jamahiriya, Madagascar, Mauritania, Morocco, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Somalia, Sudan, Syrian Arab Republic, Tunisia, Ukrainian Soviet Socialist Republic, United Arab Emirates and Yemen. He said that a just and durable solution to the Middle East problem could not be found without Israel's total and unconditional withdrawal from all the Palestinian and Arab territories occupied by it since 1967, including Jerusalem, and without the exercise of the inalienable right of the Palestinian people to return, to self-determination, to national independence and to establish a State. The resolution spelt out those parameters, which were in accordance with the Charter of the United Nations and the relevant resolutions adopted by the General Assembly and the Commission. Operative paragraph 4 of the resolution, furthermore, reaffirmed the legitimacy of the intifadah. Paragraph 8 urged all States, United Nations organs and other international organizations to support the Palestinian people. In paragraph 5, the Commission reaffirmed its support for the call to convene an international peace conference on the Middle East. Paragraph 6 condemned Israel for its continued occupation and paragraph 7 called upon it to comply with its obligations under the Charter of the United Nations and to withdraw from the territories which it had occupied since 1967. He hoped that draft resolution E/CN.4/1990/L.5 would receive the widest possible support.

53. The CHAIRMAN announced that Afghanistan, Angola, Kuwait and Nicaragua had also become sponsors of draft resolution E/CN.4/1990/L.5.

Draft resolution E/CN.4/1990/L.7

54. Mrs. MBONU (Nigeria) introduced the draft resolution on behalf of the following co-sponsors: Afghanistan, Algeria, Angola, Botswana, Colombia, Cuba, Libyan Arab Jamahiriya, Madagascar, Morocco, Nicaragua, Nigeria, Peru, Swaziland, Syrian Arab Republic, United Republic of Tanzania and Zimbabwe. She pointed out that the text was different in some respects from the one adopted the previous year on the same question, due to the fact that a number

of new elements had emerged. One of them was reflected in the twelfth preambular paragraph, namely, new criminal activities of mercenaries in collusion with drug traffickers. Another new element was, of course, the adoption by the General Assembly of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which had been welcomed in the fifteenth preambular paragraph. Operative paragraph 6 expressed the hope that the Convention would be signed and ratified by the largest possible number of States. In paragraph 8 it was decided to extend the mandate of the Special Rapporteur for two years and in paragraph 13, he was requested to follow the process of ratification and the mode of application of the new Convention. Paragraph 18 recommended that the Special Rapporteur should visit the Maldives and carry out thorough investigation of mercenary activities. She referred to the recommendation to the Economic and Social Council in paragraph 20 to ensure that the necessary resources were provided to implement the resolution, if it were adopted.

55. The CHAIRMAN announced that Egypt, India and Somalia had become sponsors of draft resolution E/CN.4/1990/L.7.

Draft resolution E/CN.4/1990/L.8

56. Mr. BEZABIH (Ethiopia) introduced the draft resolution on behalf of the following sponsors: Afghanistan, Algeria, Angola, Bahrain, Burundi, Cuba, Ethiopia, Gabon, Gambia, Ghana, Iraq, Kenya, Libyan Arab Jamahiriya, Madagascar, Mauritania, Morocco, Nicaragua, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Somalia, Sudan, Swaziland, Syrian Arab Republic, Togo, Tunisia, Ukrainian Soviet Socalist Republic, United Republic of Tanzania, Zaire and Zimbabwe. He recalled that the Commission had adopted similar resolutions for many years. The difference today was that there had been some positive developments in South Africa, for example, the release of Nelson Mandela and the lifting of the ban on anti-apartheid movements. Those developments had been noted in the penultimate preambular paragraph, although the sponsors were aware that they constituted only the first steps and that there was still a long way to go before apartheid was completely eradicated and a democratic and non-racial society established in South Africa. Until those goals had been achieved, efforts had to be redoubled. Another way in which the resolution differed from previous ones was that it made no mention of Namibia, in view of the latest developments there. Lastly, he hoped that the text would receive the widest possible support.

57. The CHAIRMAN said that Bangladesh, Cameroon, China, Egypt, India and Yugoslavia had become sponsors of draft resolution E/CN.4/1990/L.8, whereas Zaire and Swaziland had withdrawn.

Draft resolution E/CN.4/1990/L.14

58. Mrs. de LEÓN ESCALER (Philippines) introduced the draft resolution which was sponsored by the following countries: Brunei Darussalam, Burundi, Cameroon, Colombia, Gambia, Malaysia, Mauritania, Morocco, Nepal, Oman, Pakistan, Philippines, Senegal, Singapore, Somalia, Swaziland, Thailand, Togo and Turkey. She recalled that Viet Nam had violated Article 2, paragraph 4, of the Charter of the United Nations when it had occupied Cambodia illegally in 1979. That was why the situation in Cambodia had been on the Commission's agenda for the last 10 years. Draft resolution E/CN.4/1990/L.4 restated a number of fundamental elements in that situation, including the necessity for

the withdrawal of all foreign forces from Cambodia under United Nations supervision, the cessation of all outside military assistance, the creation of an interim administering authority, the promotion of national reconciliation under the leadership of Samdech Norodom Sihanouk, the non-return to the universally condemned practices of the recent past; the restoration and preservation of the independence, sovereignty and territorial integrity of Cambodia; its neutral and non-aligned status, the reaffirmation of the right of the Cambodian people to determine their own destiny and the commitment by all States to non-interference, with effective guarantees. It also called upon all parties to intensify all efforts towards finding a settlement in order to end human rights abuses, to end the loss of lives and to relieve the predicament of the refugees. Whereas the draft might appear to be a duplicate of the General Assembly resolution it, however, differed in that it drew attention to the human rights situation in Cambodia. What was at stake was a vote for the United Nations, for peace and for the human rights of the Cambodians.

59. The CHAIRMAN announced that Costa Rica, Côte d'Ivoire, Gabon, Honduras and Japan had become sponsors of draft resolution E/CN.4/1990/L.14.

Draft resolution E/CN.4/1990/L.9/Rev.1

Draft resolution E/CN.4/1990/L.15

60. The CHAIRMAN said that both draft resolutions reflected a consensus within the Commission and, therefore, proposed that they should be adopted without a vote. They addressed the question of Western Sahara and the situation in Afghanistan, respectively.

61. Draft resolutions E/CN.4/1990/L.9/Rev.1 and E/CN.4/1990/L.15 were adopted without a vote.

The meeting rose at 6.15 p.m.